

USSN 10/052,798

Response and Amendment Under §1.116 and

Contingent Suggestion for Declaration of Interference under 37 C.F.R. § 41.202



AF (Ifn)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

CAMELLIA W. ADAMS *et al.*

Application No. 10/052,798

Filed : November 2, 2001

For: APO-2 RECEPTOR

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) Docket No.: 22338-00904/P1101R2D1
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) Examiner: Eileen B. O'Hara
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) Group Art Unit: 1646
)
) Response and Amendment under 37
) C.F.R. § 1.116
) and Contingent Suggestion for
) Declaration of Interference under 37
) C.F.R. § 41.202
) Expedited Handling Requested
)
)

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Sir:

Applicants herein respond to the Final Office Action mailed January 25, 2007.

Amendments to the Claims are reflected in the listing of claims which begins on page 3 of this paper. **Remarks** begin on page 7 of this paper.

Briefly, Applicants amend claim 65 to correct a grammatical error. Applicants also maintain that the reference cited by the Examiner does not constitute prior art to Applicants under 35 U.S.C. § 102(e) and, therefore, the outstanding rejection should be withdrawn. This paper is being timely filed within the shortened three-month statutory time period.

The Examiner has determined that the pending claims interfere with claims in U.S. Patent

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Application No. 10/648,825 to Ni et al. ("the '825 application"). Despite this determination,

Applicants maintain that it would be appropriate to issue Applicants' present claims because Applicants' earliest effective filing date is prior to the earliest effective filing date of the '825 application.

As explained in more detail below, Applicant's present claims are directed to, *inter alia*, methods of inducing apoptosis in mammalian cancer cells comprising exposing mammalian cancer cells to an effective amount of an Apo-2 agonist monoclonal antibody which (a) binds to a soluble extracellular domain sequence of an Apo-2 polypeptide consisting of amino acids 54 to 182 of SEQ ID NO:1 and (b) induces apoptosis in at least one type of mammalian cancer cell *in vivo* or *ex vivo*.

In the event Applicants' pending claims are considered allowable but not in condition for issuance due to a current § 102(e) rejection, Applicants suggest the declaration of an interference between the present application and the '825 application in accordance with the provisions of 37 C.F.R. § 41.202(d). Applicants submit that this is appropriate in view of the Examiner's determination that the currently pending claims in the present application interfere with the claims pending in the '825 application. Applicants also take note of the procedural posture of the present application; namely, that it is subject to a Final Office Action, and that further amendments to the claims are not a matter of right of the Applicant.